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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,819

09/17/2003

Andrzej Strak

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26389 7590 11/29/2007
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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

11/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/664,819	STRAK ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 19-21, 23-33 and 38-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19-21, 23-33 and 38-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 3, 2007 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9-15, 19-21, 23-29, 32, 33, 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (3,897,573) in view of Mahon (3,036,923).

Kelly discloses salting fillets of fish and then coating the salted fillets with a binder made of comminuted fish muscle mixed with salt and phosphate and forming a molded, coated fish fillet (see abstract). In example 1 the coated fish is frozen and then smoked at 86F for about 6

hours and then re-frozen. The claims appear to differ from Kelly in the recitation of the use of phosphate in step a). Mahon teaches the advantages of using sodium and potassium polyphosphates to improve the taste and shelf life of haddock. Table 1 shows the various test solutions. In Table V the salt and phosphate dips are combined. The treatment time is shown at column 3, lines 6-8 to be at 2 minutes. It would have been obvious to one of ordinary skill in the art to utilize the dip of Mahon in place of the salt of Kelly to improve the taste and yield of the Kelly fish products. It is appreciated that the treatment temperature is not mentioned but it is well known in the art the cool temperatures act the extent the shelf life of fish products. It is also appreciated that the extent of phosphate and salt in the final product are not mentioned but no unobvious or unexpected difference is seen between the salt and phosphate in the fish product of Kelly in view of Mahon and the extent salt and phosphate in the fish of the process of the claims. To the extent that the binder in Kelly is based upon fish meat, it is considered to be a surimi-based binder. It is appreciated that the orientation of the seafood portions are not mentioned but no unobvious or unexpected result is seen from this feature. It is also appreciated that the size and shape of the seafood pieces are not

mentioned but to prepare portions of seafood at a consumable size would have been an obvious way to prepare the seafood. It is finally appreciated that the heat treatment time and temperature of claim 1 and 9 is not mentioned but no unobvious or unexpected result is seen from the extent of heat treatment in Kelly. It is well known in the art that cooking times may be reduced when cooking temperatures are increased. Kelly provides from varying conditions of smoking the fish at column 1, lines 55-60. To modify the cooking temperatures of Kelly to reduce cooking time would have been well within the determination of one of ordinary skill in the art.

Applicant argues that Kelly treats his fish at room temperature. This has been considered but is not persuasive. It is well known in the art that refrigeration extends the shelf-life of foods. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention to utilize refrigeration to during fish processing to extend the shelf-life of the fish. Applicant argues that Kelly does not use surimi. Examiner understands that surimi is ground fish. No difference is seen between the surimi of the claims and the ground fish of Kelly. Applicant argues that one would not expect the treatment of Mahon to have the treatment effect of the claims. This has been considered but it not persuasive. The claims merely require

a surface treatment with phosphate. There is not reason to expect the treatment of Mahon would not act to produce a surface modified seafood portion.

With regard to claims 32, 33 and 40-42, applicant argues that Kelly uses extra salt. This has been considered but is not persuasive. The claims merely call for the use of 1% phosphate and/or salt. It is not seen that Kelly uses more than 1% phosphate. Assuming, arguendo, that the claims were amended to change "and/or" to -or-, it would have been obvious to minimize the salt in Kelly in order to create a low salt alternative to the Kelly fish product.

Applicant urges that the claimed invention has advantages over Kelly because time is not wasted in thawing the fish. This has been considered but is not persuasive because the claims are open to the inclusion of a thawing step.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly (3,897,573).

Kelly discloses salting fillets of fish and then coating the salted fillets with a binder made of comminuted fish muscle mixed with salt and phosphate and forming a molded, coated fish fillet (see abstract). In

example 1 the coated fish is frozen and then smoked at 86F for about 6 hours and then re-frozen. It is appreciated that the treatment temperature is not mentioned but it is well known in the art the cool temperatures act the extent the shelf life of fish products. It is also appreciated that the extent of phosphate and salt in the final product are not mentioned but no unobvious or unexpected difference is seen between the salt and phosphate in the fish product of Kelly and the extent salt and phosphate in the fish of the process of the claims. To the extent that the binder in Kelly is based upon fish meat, it is considered to be a surimi-based binder. It is appreciated that the orientation of the seafood portions are not mentioned but no unobvious or unexpected result is seen from this feature. It is finally appreciated that the heat treatment time and temperature is not mentioned but no unobvious or unexpected result is seen from the extent of heat treatment in Kelly. It is well known in the art that cooking times may be reduced when cooking temperatures are increased. Kelly provides from varying conditions of smoking the fish at column 1, lines 55-60. To modify the cooking temperatures of Kelly to reduce cooking time would have been well within the determination of one of ordinary skill in the art. The claims appear to differ from Kelly in the recitation of the description of the surface

of the seafood portions. It would have been obvious to one of ordinary skill in the art to expect the surface of the seafood of Kelly to be modified by its surimi binder. Applicant argues that Kelly uses extra salt. This has been considered but is not persuasive. The claims merely call for the use of 1% phosphate and/or salt. It is not seen that Kelly uses more than 1% phosphate. Assuming, arguendo, that the claims were amended to change "and/or" to -or-, it would still be obvious to minimize the salt in Kelly in order to create a low salt alternative to the Kelly fish product.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly in view of Mahon as applied to claims 1-5, 7-15, 21-29, 31, 32 and 38-42 above, and further in view of Chang (4,411,917).

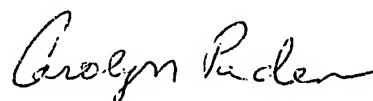
The claim appears to differ from Kelly in view of Mahon in the recitation of the use of tetra sodium pyrophosphate in fish. Chang teaches that tetra sodium pyrophosphate is well known in the art as a phosphate source for use in fish. It would have been obvious to one of ordinary skill in the art to use the phosphate of Chang in the fish of Kelly in view of Mahon as an obvious phosphate source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1700, art unit 1794. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADEN 1794
PRIMARY EXAMINER 11-28-07